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Fifty-fifth session
Item 11 (a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

United Nations Voluntary Fund for Victims of Torture

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
I.	ANNUAL REPORTS	1 - 2	3
II.	FINANCIAL STATUS	3 - 10	3
	A. Contributions paid	4 - 6	3
	B. Pledges	7 - 10	4
III.	FUND-RAISING	11 - 15	6
	A. Call for funds	11 - 13	6
	B. Meeting with regular donors	14	6
	C. Resolutions	15	6

GE.99-10269 (E)

CONTENTS (continued)

		Paragraphs	Page
IV.	NEEDS ASSESSMENT	16 - 19	7
	A. Requests received and grants awarded (1993-1998)	16	7
	B. Estimated needs for 1999	17 - 19	7
V.	PUBLIC INFORMATION	20 - 29	9
VI.	HOW TO MAKE A CONTRIBUTION	30 - 33	11
Annex I:	Torture Victims Relief Act of 1998 (United States)		12
Annex II:	Message from Mrs. Mary Robinson, United Nations High Commissioner for Human Rights, to the Staff Gala, United Nations Office at Geneva, 28 November 1998		17

I. ANNUAL REPORTS

1. In conformity with the arrangements adopted by the General Assembly for the management of the United Nations Voluntary Fund for Victims of Torture, the Secretary-General draws up an annual report to the General Assembly, indicating the funds available, pledges made and contributions received, together with disbursements from the Fund (resolution 36/151 and document A/36/540).

2. At its fifty-fourth session, in resolution 1998/38 of 17 April 1998, the Commission on Human Rights requested the Secretary-General to continue to keep it informed of the operations of the Fund on an annual basis. The Secretary-General draws the Commission's attention to his annual report on the Fund, submitted to the General Assembly at its fifty-third session (A/53/283), which is available to the Commission and is supplemented by this report.

II. FINANCIAL STATUS

3. At the time of writing of the present report (8 December 1998), from the total amount of US$ 4,210,000 recommended for grants by the Board of Trustees at its seventeenth session (A/53/283, para. 17), US$ 3,606,725 have been paid for medical, psychological, psychiatric, social, humanitarian and legal assistance programmes; US$ 603,275 can still be disbursed before the next session of the Board of Trustees in May 1999, when additional information has been received on programmes already approved for funding or for new urgent grants up to $100,000.

A. Contributions paid

4. As mentioned in the relevant provisions of General Assembly and Commission on Human Rights resolutions, the contributions for each year have to be paid before the beginning of the Board's annual session i.e. by 30 April, in order to be recorded and available for the Board's annual session. Contributions not officially recorded 1/ on the first day of the session will be considered at the following session. Pledges cannot be taken into consideration.

1. Governments

5. In his report to the General Assembly (A/53/283, para. 12), the Secretary-General indicated that US$ 714,275 2/ had been received after 22 May 1998 for allocation at the eighteenth session of the Board of Trustees in May 1999. The contributions shown in the table below were recorded after document A/53/283 was drafted. Most of these contributions were made for 1998, but, since they were received after the annual meeting of the Board in May 1998, the Board will take them into consideration at its eighteenth session, to be held from 17 to 28 May 1999.

State	Amount US$	Date	Intended for	Contr. No.
Chile	10 000	12 November 1998	1999	7
Czech Rep.	3 000	1 December 1998	1998	4
France	83 333	21 September 1998	1998	20
Ireland	66 600	6 November 1998	1998	14
Italy	89 989	10 August 1998	1998	10
Luxembourg	21 378	20 July 1998	1998	15
Nepal	1 000	21 August 1998	1998	2
Philippines a/	6 250	10 September 1998	1998	3
Spain	50 327	14 October 1998	1998	13
Sweden	379 747	25 September 1998	1998	12
United States b/	600 000	20 November 1998	1997	17
"	300 000	20 November 1998	1998	18
TOTAL	1 611 624			

a/ This amount corresponds to the partial payment of a pledge of $10,000.

b/ The United States of America paid an additional contribution of $600,000 for 1997 and another of $300,000 for 1998. These two contributions will be taken into consideration at the eighteenth session of the Board of Trustees in May 1999.

2. Individuals

6. Individuals also contributed US$ 3,851 to the Fund: Mrs. Clare Krebsbach (United States) contributed $50 and Mr. Jamieson (New Zealand), $70. An anonymous contribution of US$ 3,731 was also received.

B. Pledges

7. Government pledges to the Fund can be made directly by letter to the Office of the United Nations High Commissioner for Human Rights, at the United Nations Pledging Conference for Development Activities held in New York (the most recent Conference was held on 4 and 5 November 1998), at the annual session of the Commission on Human Rights held in Geneva or at information meetings organized for regular donors.

8. An organization in the Netherlands, Leiden Human Rights Association Habeas Corpus, informed the secretariat of the Fund that amounts earmarked for the organization of a conference on human rights which has had to be cancelled would be paid to the Fund in early 1999.

9. The following pledges had not yet been paid as of 8 December 1998:

State	Amount in US$	Amount of contr. in local currency	Announced on	Contr. No.
Algeria	5 000		4 November 1998	7
Andorra	5 000		11 April 1997	4
Brazil	10 000		20 December 1995	7
"	10 000		11 February 1996	8
"	10 000		11 April 1997	9
Greece	10 300		4 November 1998	16
Iceland	5 952		4 November 1998	13
Japan	66 000		4 November 1998	13
Liechtenstein	7 463		4 November 1998	11
Luxembourg	14 706		4 November 1998	16
Monaco	10 870		4 November 1998	6
Netherlands	537 634	f. 1 million	4 November 1998	18
Philippines a/	3 750		11 April 1998	3
"	2 595		4 November 1998	4
Portugal	15 000		26 June 1998	3
Slovenia	2 825	Slt 465 000	28 August 1998	1
Switzerland	32 374	Sw F 45 000	19 May 1998	11
Tunisia	2 000		8 October 1998	8
Total	751 469			

a/ The Government of the Philippines pledged US$ 10,000, of which US$ 6,250 have been paid.

10. The following countries referred to in the above table made their pledges in November 1998 at the United Nations Pledging Conference for Development Activities (see para. 7 above): Algeria, Greece, Iceland, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands and the Philippines.

III. FUND-RAISING

A. Call for funds

11. On 9 October 1998, the High Commissioner for Human Rights, Ms. Mary Robinson sent a letter to all Governments drawing their attention to the relevant provisions of General Assembly resolution A/51/86 of 12 December 1996 and Commission on Human Rights resolution 1998/38 of 17 April 1998, in which the Assembly and the Commission expressed their gratitude and appreciation to the Governments that had contributed or pledged a contribution to the Fund to provide assistance to the victims in a purely humanitarian spirit.

12. She wholeheartedly supported the request contained in the above-mentioned resolutions that contributions should be made annually, if possible with a substantial increase in number and level, in order to take into consideration the ever-increasing demand for assistance. She also drew Governments' attention to the request of the Board of Trustees of the Fund to contribute prior to its annual meeting in May.

13. In order to meet all the requests for assistance made in May 1998, the Fund would have needed about US$ 6.8 million, whereas it had only US$ 4.2 million. She expected that at least the same number of requests would be received in 1999. As at 8 December 1998, however, the Fund had received contributions amounting to only US$ 2,329,750.

B. Meeting with regular donors

14. As in past years, the secretariat organized a technical information meeting for regular donors in Geneva on 26 November 1998. The report of the Secretary-General to the General Assembly (A/53/283) was distributed, together with all other relevant documents. The secretariat of the Fund answered questions asked by regular donors and suggested that they should pay their pledged contributions by late April.

C. Resolutions

15. In 1998, the General Assembly and the Commission on Human Rights appealed to all States, organizations and individuals in a position to do so to contribute to the Fund on a regular basis and annually, prior to the meeting of the Board of Trustees of the Fund, if possible, with a substantial increase (see Commission on Human Rights resolution 1998/38 of 17 April 1998 and draft resolution A/C.3/53/L.23 adopted by the Third Committee of the General Assembly on 18 November 1998 3/). The draft resolution even suggests that contributions should be paid to the Fund by the end of February at the latest.

IV. NEEDS ASSESSMENT

A. Requests received and grants awarded (1993-1998)

16. Since grants requested do not match grants awarded (see table below), the Board of Trustees recommends each year that none of the amounts available in addition to the compulsory reserve should be carried forward for the following year (see A/53/283, para. 11). Each year, the Board therefore recommends that the Secretary-General should allocate the total amounts available. On the High Commissioner's recommendation, the Secretary-General has always followed this recommendation by the Board of Trustees.

Year	Grants requested (US$)	Grants awarded (US$)	% granted	Additional amount required (US$)
1998	6 800 000	4 210 000	61.9	2 590 000
1997	6 800 000	3 036 054	44.64	3 763 946
1996	5 618 645	2 535 500	45.1	3 083 145
1995	5 827 645	2 719 680	46.6	3 107 965
1994	5 476 959	3 698 080	67.5	1 778 879
1993	5 289 413	2 111 880	39.9	3 177 533

B. Estimated needs for 1999

17. The secretariat estimates that the amount requested from the Fund by the organizations concerned in 1999 will be at least as great as that requested in 1998, i.e. $6.8 million, in addition to 13 per cent in programme support costs and 15 per cent earmarked as a reserve. The amount needed will therefore be $8.7 million, from which a total of US$ 2,329,750 has to be subtracted (contributions paid since 22 May 1998 ($714,275; see A/53/283), $1,611,624 received since the publication of the report of the Secretary-General to the General Assembly and $3,851 received from individuals). An amount of $6,370,250 therefore still has to be found. As the Governments which made pledges of $751,469 were requested by the General Assembly, the Commission on Human Rights and the High Commissioner to pay by 30 April 1999, $5,618,781 still must be found. The following regular donors to the Fund have not yet paid or pledged a voluntary contribution for 1999:

State	Contribution (US$)	Number of past contributions
Argentina	5 000	9
Australia	60 000	6
Austria	20 000	15
Belgium	82 000	8
Canada	18 000	15
Cyprus	1 000	10
Denmark	290 000	16
Finland	180 000	16
France	83 000	20
Germany	112 000	16
New Zealand	15 000	12
Norway	133 000	13
Republic of Korea	15 000	5
Sweden	380 000	12
United Kingdom	200 000	10
United States	1 500 000	16
TOTAL:	3 094 000	

18. If these regular donors paid a further contribution by 30 April 1999, an additional amount of $2,524,781 would still have to be collected from new contributors to the Fund and/or regular contributors prepared to increase their contributions.

19. The Permanent Mission of the United States to the United Nations Office at Geneva and several United States centres for the treatment of victims of torture have informed the secretariat of the Fund that the United States Congress (House of Representatives and Senate) has adopted legislation entitled "Torture Victims Relief Act of 1998" (see annex I) and authorizing the President of the United States to allocate $3 million to the Fund in 1999 and in 2000 as multilateral assistance for victims of torture ($1,500,000 more than in 1998). One of the provisions of the Act also provides nationally for $5 million in 1999 and $7.5 million in 2000 for rehabilitation centres for victims of torture located in the United States. An identical amount is earmarked for treatment centres for victims of torture located abroad. If the President signs the recommendation by the Congress and decides to pay $3 million for 1999 by 30 April 1999, the Fund would still need an additional amount of about $1 million to meet all requests.

V. PUBLIC INFORMATION

20. An information meeting for non-governmental organizations taking part in the work of the Sub-Commission in August was organized by the secretariat on the activities of the Fund and, in particular, on project selection criteria, the methods of work of the secretariat and the Board of Trustees, the Fund's guidelines, the schedule of submission of requests for grants, the payment of grants and the submission of narrative and financial reports on the use of grants.

21. In its resolution 52/149 of December 1997, the General Assembly proclaimed 26 June United Nations International Day in Support of Victims of Torture. Information on the activities organized by the secretariat to commemorate this day is contained in document A/53/283 (paras. 25 and 26 and annexes I and II).

22. The High Commissioner specially recorded a video message which was broadcast simultaneously at United Nations Headquarters in New York and at the United Nations Office at Geneva on that day. On 25 June in Geneva, the Deputy High Commissioner for Human Rights inaugurated an exhibit of works by victims of torture, which was held at the Palais des Nations and during which some 100 paintings, posters, drawings, photographs and sculptures were shown. They were sent to the secretariat of the United Nations Voluntary Fund for Victims of Torture by about 30 organizations which were providing the victims and their families in many countries with medical, psychological, social, financial and legal assistance through the support of the Fund.

23. The following organizations contributed to the exhibit:

Aid for Children in Crisis (South Africa); Amigos de los Sobrevivientes (United States); Association pour les victimes de répression en exil (AVRE, France); Behandlungs Zentrum für Folteropfer (BZFO, Germany); Commission Africaine des Promoteurs de la Santé et des Droits de l'Homme (CAPSDH, Burundi); Fundación Social Colombiana (CEDAVIDA, Colombia); Centre for Victims of Torture (Nepal); Centre for Rehabilitation of War and Torture Victims (Sweden); Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos (CEFPRODHAC, Mexico); Centro de Salud Mental y Derechos Humanos (CINTRAS, Chile); Comité de Defensa para los Derechos del Pueblo (CODEPU, Chile); Comité para la Defensa de la Salud, la Etica Profesional y los Derechos Humanos (CODESEDH, Argentina); Comisión de Derechos Humanos de El Salvador; Swedish Red Cross; Estonian Center for Medical Rehabilitation for Victims of Torture; Exil (Belgium); Family Rehabilitation Center (Sri Lanka); Families of Victims of Involuntary Disappearance (FIND, Philippines); Fundación Ecuménica para el Desarrollo y la Paz (FEDEPAZ, Peru); International Rehabilitation Council for Torture Victims (IRCT, Denmark); Justice pour Tazmamart (France); Medical Foundation for the Care of Victims of Torture (United Kingdom); Medical Foundation (Uganda); Programme for Torture Victims (PTV, United States); Réseau d'intervention auprès des personnes ayant subi la violence organisée (RIVO, Canada); Sudanese Victims of Torture Group (SVTG, United Kingdom); Fund for Social Jurisprudence Research (TOHAV, Turkey); Treatment and Rehabilitation Unit for Survivors of Torture and Trauma (TRUSTT, Australia); Zentrum für sozialmedizinischen, rechtslichen und kulturellen Betreuung von Ausländern (ZEBRA, Austria).

24. The subjects of the art works shown included torture of women and children, different methods of torture, reintegration into "normal" life despite the lasting effects of torture and the need to adapt in a host country whose language, culture and way of life are different. The documentation distributed to persons who visited the exhibit included article 5 of the Universal Declaration of Human Rights, relating to torture, article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, containing the definition of torture under the Convention, and the Joint Declaration adopted on 19 May 1998 by the Committee against Torture, the Board of Trustees of the Voluntary Fund for Victims of Torture, the Special Rapporteur on questions relating to torture and the United Nations High Commissioner for Human Rights (see A/53/283, annex I).

25. The exhibit also showed posters sent in by several organizations. Another part of the exhibit was a set of black and white photographs taken by Mr. Nori S. Mahhdi and symbolizing the general theme of torture.

26. In the video part of the exhibit, visitors watched the above-mentioned message from the High Commissioner for Human Rights, as well as films on the treatment of victims of torture and the training of torturers, such as "Raisons d'Etat" by Mrs. Isábelle Benkemoun and Mr. Marc Allegret (Les Films d'Ici SA, Paris), "Malgré Tout" (Rehabilitation Centre for Victims of Torture, RCT, Copenhagen) and "Your Neighbour's Son" (Amnesty International, London).

27. The secretariat of the Fund was informed of other activities organized by non-governmental organizations, including:

(a) The Centre for Victims of Torture (Minnesota, United States): visit by the Secretary-General of the United Nations;

(b) AVRE (Association pour les victimes de répression en exil, Paris): prize-giving ceremony for the winners of a French lycée students' essay writing contest on the topic of torture;

(c) The Medical Foundation (London): the Director, Mrs. Helen Bamber, organized a press conference to launch the second edition of "Medicine Betrayed, the Participation of Doctors in Human Rights Abuses", a book used by doctors working with torture victims;

(d) CINTRAS (Centro de Salud Mental y Derechos Humanos, Chile): press conference at Villa Grimaldi, a former torture centre, with the participation of other human rights organizations.

28. In the above-mentioned Third Committee draft resolution, the General Assembly reiterated its request that the United Nations International Day in Support of Victims of Torture should be commemorated each year on 26 June. New initiatives would therefore be organized in 1999. The International Rehabilitation Council for Torture Victims (IRCT, Copenhagen) informed the secretariat that the topic chosen for 1999 would be "action to combat impunity".

29. On 28 November 1998, the United Nations Staff Coordinating Council in Geneva decided that, in 1998, the proceeds from the organization of the Staff

Gala of the United Nations Office at Geneva would go to the Fund for Victims of Torture. Information on the Fund and a message from the High Commissioner for Human Rights (see annex II) were made available to United Nations staff and members of Permanent Missions who went to the Gala.

VI. HOW TO MAKE A CONTRIBUTION

30. Governments, individuals and non-governmental organizations were invited by the Commission on Human Rights to contribute to the Fund before the next session of the Board of Trustees, i.e. by 30 April 1999. Any contribution received after this date will be recorded in the accounts for the next year and can therefore not be taken into consideration for programme assistance in 1999.

31. To contribute to the Fund by bank transfer, pay to: "United Nations Geneva General Fund" in United States dollars: UBS AG New York, account No. CO-590-160.1, Swift address: SBCOUS33; or in Swiss francs: UBS AG, P.O. Box 2770, CH-1211 Genève 2, account No. CO-590-160.0, Swift address: SBCOCHGG12A.

32. Payment may also be made by cheque, payable to "the United Nations", addressed to: Trésorerie, ONU, Palais des Nations, CH-1211 Genève 10, or to: Treasury, United Nations, New York, NY 10017, USA.

33. In all cases, please specify the following: "Payee: United Nations Voluntary Fund for Victims of Torture, account CH".

Notes

1/ An official United Nations receipt issued by the Treasurer is sent to each donor.

2/ The total amount indicated in paragraph 12 of the report is correct. The contributions of Australia and Germany should be amended to read "$60,620" (instead of "$50,000") and "$112,359" (instead of "$60,620").

3/ The corresponding General Assembly resolution was not available at the time of drafting of the present report; it will appear as document A/RES/53/139 of 9 December 1998.

Annex I

TORTURE VICTIMS RELIEF ACT OF 1998 (UNITED STATES)

One Hundred Fifth Congress of the United States of America

At the second session

Begun and held at the City of Washington on Tuesday, the twenty-seventh day of January one thousand nine hundred and ninety-eight

An Act

To provide a comprehensive program of support for victims of torture

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Torture Victims Relief Act of 1998".

SECTION 2. FINDINGS

Congress makes the following findings:

(1) The American people abhor torture by any government or person. The existence of torture creates a climate of fear and international insecurity that affects all people.

(2) Torture is the deliberate mental and physical damage caused by governments to individuals to destroy individual personality and terrorize society. The effects of torture are long term. Those effects can last a lifetime for the survivors and affect future generations.

(3) By eliminating the leadership of their opposition and frightening the general public, repressive governments often use torture as a weapon against democracy.

(4) Torture survivors remain under physical and psychological threats, especially in communities where the perpetrators are not brought to justice. In many nations, even those who treat torture survivors are threatened with reprisals, including torture, for carrying out their ethical duty to provide care. Both the survivors of torture and their treatment providers should be accorded protection from further repression.

(5) A significant number of refugees and asylees entering the United States have been victims of torture. Those claiming asylum deserve prompt consideration of their applications for political asylum to minimize their insecurity and sense of danger. Many torture

survivors now live in the United States. They should be provided with the rehabilitation services which would enable them to become productive members of our communities.

(6) The development of a treatment movement for torture survivors has created new opportunities for action by the United States and other nations to oppose state-sponsored and other acts of torture.

(7) There is a need for a comprehensive strategy to protect and support torture victims and their treatment providers, together with overall efforts to eliminate torture.

(8) By acting to heal the survivors of torture and protect their families, the United States can help to heal the effects of torture and prevent its use around the world.

SECTION 3. DEFINITION

As used in this Act, the term "torture" has the meaning given the term in section 2340(1) of title 18, United States Code, and includes the use of rape and other forms of sexual violence by a person acting under the color of law upon another person under his custody or physical control.

SECTION 4. FOREIGN TREATMENT CENTERS

(a) AMENDMENTS TO THE FOREIGN ASSISTANCE ACT OF 1961. Part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end of chapter 1 the following new section:

"SEC. 129. ASSISTANCE FOR VICTIMS OF TORTURE

"(a) IN GENERAL. The President is authorized to provide assistance for the rehabilitation of victims of torture.

"(b) ELIGIBILITY FOR GRANTS. Such assistance shall be provided in the form of grants to treatment centers and programs in foreign countries that are carrying out projects or activities specifically designed to treat victims of torture for the physical and psychological effects of the torture.

"(c) USE OF FUNDS. Such assistance shall be available:

(1) for direct services to victims of torture; and

(2) to provide research and training to health care providers outside of treatment centers or programs described in subsection (b), for the purpose of enabling such providers to provide the services described in paragraph (1)."

(b) FUNDING

(1) AUTHORIZATION OF APPROPRIATIONS. Of the amounts authorized to be appropriated for fiscal years 1999 and 2000 pursuant to chapter 1 of part I of the Foreign Assistance Act of 1961, there are authorized to be appropriated to the President $5,000,000 for fiscal year 1999 and $7,500,000 for fiscal year 2000 to carry out section 129 of the Foreign Assistance Act of 1961, as added by subsection (a).

(2) AVAILABILITY OF FUNDS. Amounts appropriated pursuant to this subsection shall remain available until expended.

(c) EFFECTIVE DATE. The amendment made by subsection (a) shall take effect October 1, 1998.

SECTION 5. DOMESTIC TREATMENT CENTERS

(a) ASSISTANCE FOR TREATMENT OF TORTURE VICTIMS. The Secretary of Health and Human Services may provide grants to programs in the United States to cover the cost of the following services:

(1) Services for the rehabilitation of victims of torture, including treatment of the physical and psychological effects of torture.

(2) Social and legal services for victims of torture.

(3) Research and training for health care providers outside of treatment centers, or programs for the purpose of enabling such providers to provide the services described in paragraph (1).

(b) FUNDING

(1) AUTHORIZATION OF APPROPRIATIONS. Of the amounts authorized to be appropriated for the Department of Health and Human Services for fiscal years 1999 and 2000, there are authorized to be appropriated to carry out subsection (a) (relating to assistance for domestic centers and programs for the treatment of victims of torture) $5,000,000 for fiscal year 1999, and $7,500,000 for fiscal year 2000.

(2) AVAILABILITY OF FUNDS. Amounts appropriated pursuant to this subsection shall remain available until expended.

SECTION 6. MULTILATERAL ASSISTANCE

(a) FUNDING. Of the amounts authorized to be appropriated for fiscal years 1999 and 2000 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961, there are authorized to be appropriated to the United Nations Voluntary Fund for Victims of Torture (in this section referred to as the "Fund") the following amounts for the following fiscal years:

(1) FISCAL YEAR 1999: For fiscal year 1999, $3,000,000.

(2) FISCAL YEAR 2000: For fiscal year 2000, $3,000,000.

(b) AVAILABILITY OF FUNDS. Amounts appropriated pursuant to subsection (a) shall remair available until expended.

(c) SENSE OF THE CONGRESS. It is the sense of the Congress that the President, acting through the United States Permanent Representative to the United Nations, should

(1) request the Fund

(A) to find new ways to support and protect treatment centers and programs that are carrying out rehabilitative services for victims of torture; and

(B) to encourage the development of new such centers and programs;

(2) use the voice and vote of the United States to support the work of the Special Rapporteur on Torture and the Committee Against Torture established under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and

(3) use the voice and vote of the United States to establish a country rapporteur or similar procedural mechanism to investigate human rights violations in a country if either the Special Rapporteur or the Committee Against Torture indicates that a systematic practice of torture is prevalent in that country.

SECTION 7. SPECIALIZED TRAINING FOR FOREIGN SERVICE OFFICERS

(a) IN GENERAL. The Secretary of State shall provide training for foreign service officers with respect to

(1) the identification of torture;

(2) the identification of the surrounding circumstances in which torture is most often practiced;

(3) the long-term effects of torture upon a victim;

(4) the identification of the physical, cognitive, and emotional effects of torture, and the manner in which these effects can affect the interview or hearing process; and

(5) the manner of interviewing victims of torture so as not to retraumatize them, eliciting the necessary information to document the torture experience, and understanding the difficulties victims often have in recounting their torture experience.

(b) GENDER-RELATED CONSIDERATIONS. In conducting training under subsection (a) (4) or (5), gender-specific training shall be provided on the subject of interacting with women and men who are victims of torture by rape or any other form of sexual violence.

Speaker of the House of Representatives
(signed)

Vice President of the United States
(signed)

President of the Senate
(signed)

Annex II

MESSAGE FROM MRS. MARY ROBINSON,
UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS,
TO THE STAFF GALA, UNITED NATIONS OFFICE AT GENEVA,
28 NOVEMBER 1998

"The Staff Gala of UNOG, organized by the Staff Coordinating Council, is a rather special event this year on the occasion of the celebration of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights: the United Nations Voluntary Fund for Victims of Torture will benefit from the proceeds of the Gala.

Torture is one of the vilest acts to be perpetrated by human beings upon one another.

The proceeds paid in to the Fund will contribute to projects providing medical, psychological, social, humanitarian and legal assistance to victims of torture and members of their families worldwide.

Helping these victims lead a normal life is one of the goals of the General Assembly when establishing the International Day in Support of Victims of Torture. Your presence at the Gala will be a demonstration of solidarity with these men, women and children who still suffer physically and psychologically from the after-effects of torture and the impunity of their torturers."

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COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Human rights and arbitrary deprivation of nationality

Report of the Secretary-General

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 3	2
II.	INFORMATION SUBMITTED BY GOVERNMENTS		
	Denmark	4	2
	Estonia	5 - 10	2
	Ghana	11 - 18	3
	Kuwait	19 - 20	4
	Monaco	21 - 23	5
	Portugal	24 - 29	6
	United Kingdom of Great Britain and Northern Ireland	30 - 34	7
	United States of America	35 - 46	8

GE.98-05324 (E)

Introduction

1. In its resolution 1998/48 of 17 April 1998, entitled "Human rights and arbitrary deprivation of nationality", the Commission on Human Rights called upon all States to refrain from taking measures and from enacting legislation that discriminated against persons or groups of persons on grounds of race, colour, gender, religion, or national or ethnic origin by nullifying or impairing the exercise, on equal footing, of their right to a nationality, especially if that rendered a person stateless, and to repeal such legislation if it already existed. The Commission also urged its appropriate mechanisms and the pertinent United Nations treaty bodies to continue to collect information on the question from all relevant sources and to take account of such information, together with any recommendations thereon, in their reports. The Commission requested the Secretary-General to report on the implementation of the resolution at its fifty-fifth session.

2. In pursuance of this resolution a note verbale was addressed to Governments, on 27 August 1998, and a copy of the resolution was transmitted to the appropriate mechanisms of the Commission and the pertinent United Nations treaty bodies.

3. By 7 December 1998, replies had been received from the Governments of Azerbaijan, Denmark, Estonia, Ghana, Kuwait, Monaco, Portugal, the United Kingdom of Great Britain and Northern Ireland and the United States of America. These replies are summarized or reproduced in the present report. The full texts of Constitutions attached to replies may be consulted in the secretariat.

II. INFORMATION SUBMITTED BY GOVERNMENTS

Denmark

[Original: English]
[22 October 1998]

4. Denmark signed the European Convention on Nationality on 6 November 1997 in Strasbourg. The ratification procedure is expected to be completed during the coming parliamentary session. Arbitrary deprivation of nationality does not occur in Denmark.

Estonia 1/

[Original: English]
[29 September 1998]

5. The fundamental rights, freedoms and duties in the Republic of Estonia are regulated in accordance with Chapter II of the Constitution. The constitutional provisions of articles 8, 9, 12 and 13 are relevant to the content of the resolution.

1/ The full text of the articles referred to may be consulted in the secretariat.

6. In accordance with the Constitution (art. 3), generally recognized principles and rules of international law are an inseparable part of the Estonian legal system. The Constitution also provides (art. 123) that if laws or other legislation of Estonia are in conflict with international treaties ratified by the Riigikogu (Parliament), the provisions of the international treaty shall apply.

7. Conditions and procedures for loss of Estonian citizenship are contained in chapter 6 of the Law of Citizenship (arts. 22 and 26-29).

8. The administrative courts are responsible for the judicial review of public administration (Law on Citizenship, art. 36).

9. Administrative court proceedings are based on the Code of Administrative Court Procedure (arts. 5 and 4).

10. As of today no cases of arbitrary deprivation of nationality have been brought before Estonian courts.

Ghana

[Original: English]
[9 November 1998]

11. Resolution 1998/48 calls up certain considerations, the first of which is the effect it will have on international law as a whole and its particular effect on the principle of State sovereignty.

12. With regard to the effect on international law in general, it raises the question as to whether it would add anything new to the law as it relates to international human rights. In other words, Member States are being called upon to consider whether the right to a nationality can be defined as a human right.

13. In the preamble, the resolution recalls existing international provisions which tend to establish the right to a nationality as a right. The 1948 Universal Declaration of Human Rights, though not formally binding, proclaims the broadest scope of this right in its article 15 by declaring that "everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality". In narrow terms, the right to a nationality is mentioned in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, in that it places an obligation on States to guarantee the enjoyment of this right without any racial discrimination. The International Covenant on Civil and Political Rights (1966) also provides a narrow concept of the right by stating that "every child has a right to acquire a nationality" (art. 24.3). This brief right of "every child" is further developed in the 1989 Convention on the Rights of the Child, which provides that the child shall have "the right to acquire a nationality" (art. 7) and that the implementation of this right shall be ensured by States "in accordance with their national law and their obligations under the relevant international instruments".

14. Resolution 1998/48 seeks to introduce innovations into the law relating to international human rights in that it couches the right to a nationality in very broad terms, by affirming the right to a nationality of every human person as an inalienable human right.

15. While a lot is to be said for the right to a nationality as a human right one cannot overlook the other side of the coin, namely the effect of such a right on the principle of State sovereignty.

16. In the Nottebohm Case, (ICJ Reports 1955, p. 23) nationality was defined as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties".

17. In accordance with the principle of public international law, whether or not a person possesses a particular nationality is a question of the internal laws of that State. The principle that every State shall settle, by its own legislation, rules relating to the acquisition or loss of its nationality, is one which affirms the sovereignty of each State, and it must be maintained. The effect of legislation which deprives individuals of their nationality may, however, be prejudicial to other States, particularly with regard to the possibility of the influx of refugees into their territories. Also, deprivation of nationality has certain consequences for the international community, as it is invariably linked with statelessness, a condition which requires other States to grant entry into their territories and to accord specific privileges as provided under the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). In effect, to the extent that it may infringe upon the rights of other States, the discretionary power of a State to deprive nationals of their nationality should not be without limits.

18. In the 1997 European Convention on Nationality, efforts have been made to bridge the divergence between the principle of State sovereignty and any limitations to be placed on it with regard to nationality. Article 3 of this Convention provides that each State shall determine under its own law who are its nationals. The Convention then goes on to affirm that the internal laws of a State shall be accepted by other States insofar as is consistent with international conventions, customary international law and the principles of law generally recognized with regard to nationality. This formulation, which lays emphasis on the State as sovereign, is worthy of some consideration during discussions and debates on resolution 1998/48. In other words, it is hoped that the resolution would not entirely ignore the principle of State sovereignty.

Kuwait

[Original: Arabic]
[30 October 1998]

19. The Kuwaiti authorities wish to state that matters relating to nationality are of great importance to the State insofar as they involve aspects that affect the homeland, as well as considerations concerning the

sovereign entity of the State, its internal and external security and its social and economic situation and circumstances, in addition to the fact that nationality implies a bond of loyalty and a sense of patriotism in the absence of which it becomes necessary and even essential to withdraw citizenship status from a person who has acquired it.

20. Article 4, paragraph 5, and articles 13, 14 and 21 bis of Amiral Decree No. 15 of 1959, as amended, define the circumstances in which Kuwaiti nationality may be lost, withdrawn or forfeited. It is noteworthy that these articles do not specify any racial, ethnic, religious or gender-related grounds on which nationality may be lost, withdrawn or forfeited. Most of the specified grounds relate to the preservation of the country's security, integrity and socio-economic stability in a manner consistent with the principle of equality in regard to rights and obligations as affirmed in article 29 of the Kuwaiti Constitution (All persons are equal in regard to dignity and, in the eyes of the law, have equal public rights and obligations without any discrimination on grounds of sex, origin, language or religion).

Monaco 2/

[Original: French]
[19 September 1998]

21. Information supplied by the Directorate of External Relations of the Principality of Monaco indicates that, under article 18 of the Constitution of Monaco dated 17 December 1962, the circumstances in which a person who has acquired Monegasque nationality by naturalization may be deprived of it are laid down in the law. Loss of Monegasque nationality in any other circumstances may occur only as a result of the intentional acquisition of another nationality or of service unlawfully carried out in a foreign army.

22. These provisions appear in title III of the Constitution, entitled "Fundamental freedoms and rights". They offer a fundamental safeguard against any arbitrary deprivation of nationality, and one which is strictly subject to judicial review.

23. The following items of legislation govern the circumstances in which Monegasque nationality may be acquired or lost:

Act No. 572 of 18 November 1952 concerning the acquisition of Monegasque nationality (arts. 5 and 6);

Act No. 1155 of 18 December 1992 concerning nationality (chaps. III, IV and V, sect. I);

Ordinance No. 10.822 of 22 February 1993 for the application of Act No. 1155 of 18 December 1992 concerning nationality.

2/ The text containing the articles of the Constitution of Monaco may be consulted in the secretariat.

Portugal

[Original: English]
[3 December 1998]

24. Pursuant to article 26 (1) of the Portuguese Constitution, the right to citizenship shall be considered as a fundamental right and recognized to all persons. Paragraph (4) of the same article prescribes that a person may be deprived of citizenship only in cases and under conditions laid down by the law, and never on political grounds.

25. In accordance with the Portuguese Law on Nationality (art. 8), no Portuguese citizen shall be deprived of his or her nationality unless he or she, being a national of another State, declares that he or she does not wish to be Portuguese. Therefore, no arbitrary deprivation of nationality is possible within the Portuguese legal framework.

26. The deprivation of nationality on racial, national, ethnic, religious or gender grounds is strictly prohibited by the principles on which the Portuguese legal system is based, for it would be an obvious violation of the principle of equality, as defined by article 13 (2) of the Portuguese Constitution, which prescribes that "no one shall be privileged, favoured, injured, deprived of any right or exempt from any duty because of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation or social status".

27. Article 1 (1) (d) of the Portuguese Law on Nationality prescribes that all persons born within Portuguese territory shall be granted Portuguese nationality, as long as they do not possess any other nationality. This is an important mechanism to avoid cases of statelessness.

28. The Portuguese Law on Asylum (art. 1 (1)) provides for the granting of asylum to aliens or stateless people persecuted or seriously threatened with persecution as a result of activity exercised in the State of their nationality or habitual residence, in favour of democracy, social and national liberty, peace among peoples, freedom and the right of the human beings. Paragraph 2 of the same article prescribes that any aliens or stateless people who, having a well-founded fear of being persecuted for reasons of their race, religion, nationality, political opinions or membership of a particular social group, are unable to or, owing to such fear, are unwilling to return to the State of their nationality or habitual residence shall also be entitled to the grant of asylum.

29. Furthermore, Portugal is a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, to the International Covenant on Civil and Political Rights and to the Convention on the Rights of Child, all of which contain provisions regarding the issue of nationality.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[26 October 1998]

30. Deprivation of nationality is, in the United Kingdom and its Overseas Territories, based firmly on the rule of law. Provision for the withdrawal of British citizenship (BC), British Dependent Territories citizenship (BDTC) and the status of the British National (Overseas) (BN(O)) acquired by registration or naturalization, is made by section 40 of the British Nationality Act 1981 (c. 61) read with article 7 of the Hong Kong (British Nationality) Order 1986 (No. 948).

31. The legislation provides as follows:

(a) A person may be deprived of BC, BDTC or BN(O) status if the registration or naturalization by virtue of which the person became a citizen or national was obtained by means of fraud, false representation or the concealment of any material fact.

(b) A person who acquired BC, BDTC or BN(O) by or as a result of naturalization or registration otherwise than under the British Nationality Acts 1948 to 1964 may additionally be deprived of that citizenship or status if he or she:

(i) Has shown him/herself by act or speech to be disloyal or disaffected towards Her Majesty, or

(ii) Has, during any war in which Her Majesty was engaged, unlawfully traded or communicated with an enemy, or

(iii) Has, within five years of the date of registration or naturalization, been sentenced to imprisonment for at least 12 months and would not, on losing British nationality, become stateless.

(c) The person against whom it is proposed to make an order for deprivation of citizenship has the right to have his or her case considered by a committee of inquiry appointed for the purpose by the Home Secretary.

(d) British nationality may not be withdrawn unless it can be shown that such action is necessary in the public interest

(e) Any direction vested in the executive by the Act is to be exercised "without regard to the race, colour or religion of any person who may be affected by its exercise".

32. There is no provision for the withdrawal of nationality acquired by any other means than registration or naturalization, for example through birth or ancestry. Nor is any provision made for the withdrawal of any of the other forms of British nationality, such as British Overseas citizenship. The

status of British protected person and, in certain circumstances, the status of British subject, is lost automatically if and when the person concerned acquires any other nationality or citizenship.

33. The power to withdraw nationality is regarded very much as one of last resort. It has not been used since the 1981 Act came into force in 1983, and there were only 10 instances of deprivation of citizenship by order of the Home Secretary under its immediate predecessor, the British Nationality Act 1948.

34. The legislation is entirely consistent with the provisions of the Convention on the Reduction of Statelessness.

United States of America

[Original: English]
[9 October 1998]

35. The United States law regarding United States citizenship is not based on race, nationality, ethnic, religious or gender grounds. Qualifying grounds for acquisition of United States citizenship are principally based on birth in the United States, the nationality of one's parents and/or lawful residency in the United States.

36. Section 309 of the Immigration and Nationality Act (INA) establishes different requirements for acquisition of United States citizenship by a child born out-of-wedlock to a United States citizen father, as distinguished from a United States citizen mother. Earlier in 1998, the United States Supreme Court declined to hold that this was unconstitutional, though that decision was based largely on procedural considerations. Thus, gender is not a consideration in loss of nationality cases, but it can matter in acquisition of nationality cases.

37. In accordance with the Fourteenth Amendment to the Constitution of the United States, all persons born within the United States are citizens (except diplomats accredited to the United States and thus not subject to United States jurisdiction). Citizenship cannot be waived nor can it be relinquished by unilateral declaration except as provided by law. Qualified non-citizens may acquire United States citizenship through naturalization in the United States and thereafter their citizenship is similarly protected. United States laws do not permit the arbitrary deprivation of nationality based on race, national origin, ethnic, religious, or gender grounds - the grounds enumerated in resolution 1998/48.

38. Paragraph 3 of resolution 1998/48 calls upon all States to refrain from enacting legislation that nullifies or impairs the right of a person to a nationality or renders a person stateless for reasons related to race, national origin, gender, religion or ethnicity, and to repeal legislation that has that effect. Assuming this does not detract from the right of a country to determine who its citizens are, United States law does not conflict with the intent of the Commission on Human Rights in adopting resolution 1998/48.

The Congress of the United States is vested with the authority to enact legislation concerning United States nationality, and to set criteria for acquisition or loss of United States citizenship.

39. The United States, however, has recognized the right of expatriation as an inherent right of all people. Citizens of the United States can surrender their United States nationality through voluntary performance of a statutorily-specified expatriating act with the intention of relinquishing citizenship. In addition, a person who acquires United States citizenship after birth through naturalization in the United States is subject to loss of United States citizenship. In fact, United States law and policy generally presumes that a United States citizen intends to retain United States citizenship unless the person takes a policy-level position in a foreign Government; is convicted of treason; formally renounces United States citizenship; or expressly states an intention to relinquish United States citizenship.

Revocation of naturalization

40. The United States Government may bring a civil action to revoke a person's naturalization, if that person obtained naturalization illegally or by wilful concealment or misrepresentation of facts material to eligibility for naturalization. That person has a legal right to have the issue resolved in the courts of the United States. The Supreme Court has affirmed that the burden of evidence is on the United States Government to present clear, unequivocal and convincing evidence that the person obtained naturalization improperly. As in any legal action in the United States, the defendant in a naturalization revocation case is afforded all due process, protections and rights of appeal.

Voluntary relinquishment of nationality

41. Section 349 of the INA states that United States citizens are subject to loss of citizenship if they perform certain acts voluntarily and with the intention of relinquishing United States citizenship, such as: naturalizing in a foreign State; taking an oath to a foreign State or its political subdivisions; entering or serving as a commissioned or non-commissioned officer in the armed forces of a foreign State or entering or serving in the armed forces of a foreign State engaged in hostilities against the United States; working for a foreign Government if (a) one has that foreign nationality or (b) a declaration of allegiance is required in accepting the position; formally renouncing United States citizenship before a United States consular officer outside the United States; formally renouncing United States citizenship within the United States (But only within time of war); and committing an act of treason (if there is a conviction).

42. The Department of State has an administrative standard of evidence that United States citizens intend to retain their citizenship when they become citizens of a foreign State, subscribe to routine declarations of allegiance to a foreign State or accept non-policy level employment with a foreign Government.

43. The premise that a person intends to retain United States citizenship is not applicable when the individual: formally renounces United States citizenship before a United States consular officer; takes a policy-level position in a foreign Government; commits treason; or otherwise performs an act that is potentially expatriating by statute, and engages in conduct that compels the conclusion that the individual intended to relinquish United States citizenship. In these cases, a person may lose United States nationality.

Dual nationality

44. When a person is naturalized in a foreign State or otherwise possesses another nationality, and thereafter is found not to have lost United States citizenship, the individual may possess dual nationality, if dual nationality is permissible under the law of the foreign State. The United States does not favour dual nationality as a matter of policy, but does not prohibit it in the United States. Dual citizenship may exist in individual cases, sometimes by operation of laws without regard to the wishes of the individual.

Statelessness

45. The United States recognizes the right of a person to relinquish citizenship and thereby become stateless. The United States, however, also recognizes that fraudulently obtained citizenship may be revoked, even if the individual in question is thereby rendered stateless. If a person voluntarily relinquishes citizenship or has citizenship revoked, loss of nationality can lead to statelessness if the person does not possess a foreign nationality or acquire another nationality subsequent to loss of United States citizenship.

Conclusion

46. United States law does not permit the arbitrary deprivation of nationality based on race, national origin, ethnic, religious or gender grounds. Loss or surrender of United States citizenship is regulated by law, protected by constitutional due process guarantees, and subject to appeal. In fact, United States law and policy generally assume that a United States citizen intends to retain United States citizenship.

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Human rights and arbitrary deprivation of nationality

Report by the Secretary-General

Addendum

CONTENTS

		Paragraphs	Page
II.	INFORMATION SUBMITTED BY GOVERNMENTS	1 - 14	
	Russian Federation	1 - 14	2

GE.99-11190 (E)

INFORMATION SUBMITTED BY GOVERNMENTS

Russian Federation

[Original: Russian]
(30 November 1998)

1. Matters relating to citizenship in the Russian Federation are governed by the Russian Federation Citizenship Act, which entered into force in 1992. This Act takes into account the requirements of the generally recognized norms and principles of international law and the provisions of the Constitution of the Russian Federation concerning citizenship and human rights. The Act states that "everyone has the right to citizenship" in the Russian Federation.

2. A citizen of the Russian Federation may be allowed, upon application, simultaneously to have the citizenship of another State, provided that there is a corresponding bilateral treaty with that State. Citizenship of the Russian Federation may be acquired:

(a) As a result of its acceptance;

(b) By birth;

(c) Through the procedure for its registration;

(d) As a result of the granting of citizenship;

(e) As a result of the restoration of citizenship of the Russian Federation;

(f) By choosing or opting for citizenship of the Russian Federation when a territory changes hands between one State and another, or on other grounds as provided for in the treaties of the Russian Federation;

(g) On other grounds as provided for in the Russian Federation Citizenship Act.

3. All citizens of the former USSR permanently residing in the Russian Federation on the day of the entry into force of the Citizenship Act and not having declared within a year thereof that they did not wish to hold the citizenship of the Russian Federation acquired that citizenship by acceptance.

4. This category of persons includes children whose parents are Russian citizens, whatever their place of birth. If one of the parents is a Russian citizen and the other is a stateless person, the child is a citizen of the Russian Federation regardless of where he or she was born.

5. If the other parent has another citizenship (citizenship of another State), the question of the child's citizenship, regardless of place of birth is determined on the basis of a written agreement between the parents. In the absence of such an agreement, the child acquires the citizenship of the Russian Federation if he or she was born in its territory or if he or she would otherwise become a stateless person.

6. Children become citizens of the Russian Federation if their parents are unknown, or if they were born in Russia to parents who were nationals of other States, or if those States do not grant them their citizenship, or if they were born in Russia to stateless persons.

7. The acquisition of Russian citizenship by registration may be described as a simplified version of the procedure for the granting of citizenship. In order to acquire Russian citizenship under this procedure it is necessary to express the wish to become a Russian citizen by submitting an application. Russians permanently residing in former republics of the Soviet Union and not having the citizenship of their country of residence can also obtain Russian citizenship by the simplified registration procedure.

8. As for foreign citizens and stateless persons, the usual condition for them to be granted Russian citizenship, under article 19 of the Citizenship Act, is permanent and uninterrupted residence in the Russian Federation for five years or three years, respectively, directly prior to making an application. For recognized refugees in the Russian Federation these time-limits are reduced by half.

9. In granting citizenship of the Russian Federation, no discrimination is permitted in respect of origin, social status, race or ethnic group, sex, education, language, attitude towards religion, political views or other beliefs.

10. The Russian Federation encourages stateless persons to acquire Russian citizenship and does not prevent them from acquiring any other citizenship. The Russian Federation, views arbitrary deprivation of citizenship as a violation of a basic human right, namely the "right to have rights".

11. Citizenship is a necessary condition for the full realization of human rights. Loss of citizenship of the predecessor State and difficulties in obtaining the citizenship of the successor State may account for many human tragedies and the infringement of generally recognized human rights and freedoms.

12. With the appearance of new States, particularly in the place of the former USSR and in Eastern Europe, the question of citizenship has acquired special relevance. Although citizenship is in fact governed by domestic legislation, this institution directly affects the international order and international relations. A State's legislative competence regarding citizenship is not, therefore, absolute.

13. The development of international human rights standards in recent decades has made it possible at the international level to challenge the provisions of States' domestic legislation which infringe human rights. When

addressing the question of citizenship in their legislation, States are therefore bound to make sure that human rights are protected to the maximum extent.

14. The Russian Federation considers that, in the case of the succession of States, when the predecessor State ceases to exist, all of its citizens have the right to acquire the citizenship of the successor State. This principle has been followed by the majority of the States that were formed after the dissolution of the USSR.

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Addendum

GE.99-11320 (E)

INFORMATION SUBMITTED BY GOVERNMENTS

Azerbaijan

[Original: Russian]
[20 November 1998]

1. Since regaining independence and becoming a full member of the international community, the Azerbaijani Republic has made progress towards building a secular State based on the rule of law.

2. Forty-eight of the 158 articles of the Azerbaijani Constitution, which was adopted on 12 November 1995 by a national referendum, relate to the protection of individual rights and freedoms.

3. Under article 25 of the Constitution, the State guarantees everyone equal rights and freedoms irrespective of race, nationality, religion, language, sex, origin, property status job status, convictions and political party, trade union or other social affiliations. Restrictions on individual rights and freedoms on grounds of race, nationality, religion, language, sex, origin, convictions or political or social affiliations are prohibited.

4. Under article 53 of the Constitution and article 2 of the Citizenship Act, adopted on 7 October 1998, citizens of the Azerbaijani Republic cannot in any circumstances be deprived of their citizenship.